

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF)	
DELMARVA POWER & LIGHT COMPANY)	
FOR CONFIDENTIAL TREATMENT OF)	
INFORMATION REGARDING THE)	PSC DOCKET NO. 21-0149
FREEDOM OF INFORMATION ACT ("FOIA"))	
REQUEST FROM MR. JOHN NICHOLS)	
CONCERNING PSC DOCKET NO. 20-0757)	
(FILED MARCH 1, 2021))	

ORDER NO. 9755

AND NOW, this 10th day of March 2021, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on November 16, 2020, Delmarva Power & Light Company ("Delmarva" or the "Company") filed a letter and accompanying exhibits regarding "Delmarva Power's monthly computation of the Service Classification QFCP-RC charges, including current factors and reconciliation factors as required in Order No. 8136, dated April 17, 2012 in Docket 11-362 and outlined in Tariff Leaf No. 74d." (the "Filing"); and

WHEREAS, the Filing was assigned Docket No. 20-0757; and

WHEREAS, the Filing included two exhibits (Exhibits 2 and 3) that were filed with the Commission via DelaFile with "Confidential" Security Levels and were submitted via email to Commission Staff ("Staff") with confidential designations; and

WHEREAS, on or about January 18, 2021, the Commission's Freedom of Information Act ("FOIA") Coordinator sent a letter to Delmarva regarding "John Nichols' January 14, 2021

FOIA Request regarding PSC Docket No. 20-0757; Delmarva Power Qualified Fuel Cell Provider Project Tariffs” (the “FOIA Letter”); and

WHEREAS, the FOIA Letter noted that Mr. Nichols requested “‘unredacted copies of exhibits 2 and 3 in PSC Docket No. 20-0757 marked as ‘Documents to be used by Staff for review of filing’ (the ‘Requested Documents’)”; and

WHEREAS, the FOIA Letter further noted that “Delmarva is required to ‘[a]dvise the Commission in writing whether it opposes the disclosure of the [Requested Documents]. If the Commission is not so notified, it will produce the [Requested Documents].’ (8 *Del. Admin. C.* § 1202-6.2.2). If Delmarva opposes disclosure, Delmarva is required to ‘[p]rovide in writing, at the time of notifying the Commission of its objection, information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to,’ the terms set forth in subsections 6.2.3.1–6.2.3.3. (8 *Del. Admin. C.* § 1202-6.2.3). (See 8 *Del. Admin. C.* § 1202-6.0, *et seq.*)”; and

WHEREAS, on February 1, 2021, Delmarva provided the FOIA Coordinator with a response to the FOIA Letter (the “FOIA Response”); and

WHEREAS, on March 1, 2021, in furtherance of its FOIA Response, Delmarva filed the above-captioned petition (“Petition”) requesting that certain confidential information remain exempt from disclosure under Delaware law pursuant to 29 *Del. C.* § 10002, *et seq.*, 8 *Del. Admin. C.* § 1202-6.2.3, *et seq.*, and 26 *Del. Admin. C.* § 1001-1.11.2; and

WHEREAS, Delmarva’s Petition set forth the reasoning as to why certain information in Exhibit 2 and Exhibit 3 should continue to be withheld as confidential (the “Exempted Information”); and

WHEREAS, on March 10, 2021, at its regularly scheduled Commission meeting, the Commission provided interested parties an opportunity to be heard with respect to Delmarva's Petition;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. After review and consideration of the Petition and the parties' arguments at the March 10, 2021 Commission meeting, the Commission hereby finds that Delmarva has satisfied its burden of establishing confidentiality under FOIA, as set forth in 8 *Del. Admin. C.* § 1202-6.2.4.

2. The Commission hereby concludes that the Petition sufficiently justifies a claim of confidentiality under Delaware law pursuant to 29 *Del. C.* § 10002, *et seq.*, 8 *Del. Admin. C.* § 1202-6.2.3, *et seq.*, and 26 *Del. Admin. C.* § 1001-1.11.2.

3. The Commission therefore finds that Delmarva, by and through its Petition, has met its burden in demonstrating that the Exempted Information in Exhibit 2 and Exhibit 3 includes trade secrets and financial or commercial information which is confidential and therefore exempt from public disclosure in accordance with 29 *Del. C.* § 10002(1).

4. The Commission hereby orders that certain information in Exhibit 2 and Exhibit 3 shall remain exempt from disclosure under Delaware law pursuant to 26 *Del. Admin. C.* § 1001-1.11.2.

5. The Commission further orders that, within 10 days of this order, pursuant to 26 *Del. Admin. C.* § 1001-1.11.4, Delmarva shall submit for filing one copy of Exhibit 2 and Exhibit 3 without the Exempted Information, along with an indication that the confidential information has been deleted.

6. That the Commission reserves jurisdiction and authority to enter such further

Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

Joann Conaway, Commissioner

Harold Gray, Commissioner

Manubhai "Mike" Karia, Commissioner

Kim F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary